

# SENATE BILL No. 431

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-17.

**Synopsis:** Modification of sentences. Provides that a defendant may receive a sentence modification after serving 365 days of an executed sentence if the defendant serves at least ten years or one-third of the executed sentence or demonstrates a pattern of behavior consistent with rehabilitation.

**Effective:** July 1, 2004.

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**Breaux**

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January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 431

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 35-38-1-17, AS AMENDED BY P.L.291-2001,  
2       SECTION 224, IS AMENDED TO READ AS FOLLOWS  
3       [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) Within three hundred  
4       sixty-five (365) days after:

5               (1) the defendant begins serving ~~his~~ **the defendant's** sentence;  
6               (2) a hearing at which the defendant is present and of which the  
7               prosecuting attorney has been notified; and  
8               (3) obtaining a report from the department of correction  
9               concerning the defendant's conduct while imprisoned;  
10       the court may reduce or suspend the sentence. The court must  
11       incorporate its reasons in the record.

12       (b) If more than three hundred sixty-five (365) days have elapsed  
13       since the defendant began serving the sentence and after a hearing at  
14       which the convicted person is present, the court may reduce or suspend  
15       the sentence, subject to the approval of the prosecuting attorney.  
16       However, if in a sentencing hearing for a defendant conducted after  
17       June 30, 2001, the court could have placed the defendant in a

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community corrections program as an alternative to commitment to the department of correction, the court may modify the defendant's sentence under this section without the approval of the prosecuting attorney to place the defendant in a community corrections program under IC 35-38-2.6.

(c) **Notwithstanding the requirement under subsection (b) of the prosecuting attorney's approval, the court may reduce or suspend the executed sentence of a defendant if more than three hundred sixty-five (365) days have elapsed since the defendant began serving the executed sentence if the:**

(1) **defendant has served at least ten (10) years or one-third (1/3) of the executed sentence; or**

(2) **court determines the defendant has demonstrated a pattern of behavior consistent with rehabilitation based upon:**

(A) **a report from the department of correction concerning the defendant's conduct while imprisoned;**

(B) **the successful completion of a diploma, degree, or program under IC 35-50-6-3.3; or**

(C) **any other evidence the court considers relevant.**

**The court shall use the expected release date (as defined in IC 11-8-1-8.5) of the defendant in determining whether the defendant has served at least ten (10) years or one-third (1/3) of the executed sentence under subdivision (1).**

(d) **The court must give notice of the order to reduce or suspend the sentence under this section to the victim (as defined in IC 35-35-3-1) of the crime for which the defendant is serving the sentence.**

~~(d)~~ (e) **The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.**

~~(e)~~ (f) **The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.**

~~(f)~~ (g) **Notwithstanding subsections (a) and (b), the court is not required to conduct a hearing before reducing or suspending a sentence if:**

(1) **the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and**

(2) **the defendant has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.**

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